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Please quote our reference: **PFA/GA/1772/2010/SM**

**BY REGISTERD POST**

Dear Sir,

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT, 24 OF 1956 (“the Act”): U CHINEEMESTRY (“complainant”) v FUNDSATWORK UMBRELLA PROVIDENT FUND (“first respondent”); FUNDSATWORK PROVIDENT PRESERVATION FUND (“second respondent”); MOMEMTUM GROUP LIMITED (“third respondent”) AND CAPRI LINEN (PTY) LTD (“fourth respondent”)**

**[1] INTRODUCTION**

- 1.1 The complaint concerns the withdrawal of the complainant from the membership of the first and second respondents and his removal from the medical aid scheme by his employer.
- 1.2 The complaint was received by this Tribunal on 27 August 2010. On 9 September 2010, letters were sent to the first, second and third respondents giving them until 11 October 2010 to file a response. Another letter was sent to the fourth respondent on 10 July 2010 giving it until 20 July 2012 to file a response. Responses on behalf of the first, second

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and third respondents were received on 14 May 2012 and 4 July 2012. The responses were forwarded to the complainant on 10 July 2012 in the event that he wishes to file further submissions. No further submissions were received from the parties.

- 1.3 Having considered the written submissions, it is considered unnecessary to hold a hearing in this matter. As the background facts are known to the parties, only those facts that are pertinent to the issues raised herein will be repeated. The determination and reasons therefor appear below.

## [2] **FACTUAL BACKGROUND**

- 2.1 The complainant was employed by the fourth respondent from 1 October 2005 until his employment was terminated due to ill-health on 11 November 2009. He was a member of both the first and second respondents until his employment was terminated. The third respondent is the administrator of the first and second respondents.
- 2.2 On 11 November 2009, the complainant received a letter from the fourth respondent stating that he has been terminated from the company's medical aid and provident fund. The fourth respondent also advised the complainant that it has terminated its participation in the first respondent.
- 2.3 The complainant was subsequently paid withdrawal benefits by the first and second respondents in the amounts of R21 257.91 and R85 432.28 respectively in 2009. He is also receiving permanent health insurance benefit in terms of an income protection scheme underwritten by the third respondent.

## [3] **COMPLAINT**

- 3.1 The complainant states in his initial complaint that the fourth respondent was provided with two medical reports from his doctors which recommended that he should be medically boarded due to ill-health. However, he alleges that the fourth respondent forced him to pay its portion and his portion of the medical aid and provident fund contributions from August 2008. It also removed him from the first respondent in 2007 without his consent.
- 3.2 Further, he states that the fourth respondent was aware of his pending claim for a disability benefit when it terminated his employment. He states that the fourth respondent feared that it would have been liable to pay his provident fund and medical aid contributions until he reaches the age of 65 years if his disability claim was successful. He requests that the fourth respondent should be ordered to refund all his provident and medical aid contributions.
- 3.3 The complainant confirms in his last complaint, which was received by this Tribunal on 21 February 2012 that he was medically boarded by the fourth respondent as he could not work due to ill-health. However, he contends that the fourth respondent withdrew his membership of the first and second respondent without his permission. It also removed him from its medical aid scheme without his consent. He states that there was no disciplinary hearing before his employment was terminated. The complainant submits that he is concerned that he should be receiving a monthly pension as he is 65 years old. He asserts that the fourth respondent was supposed to pay his provident fund contributions until he reaches his retirement age.
- 3.4 Therefore, he submits that his withdrawal from the first and second respondents prejudiced him financially. He requests this Tribunal to investigate these issues as he believes that he should be receiving a monthly pension.

**[4] RESPONSE**

- 4.1 The third respondent states that the complainant was paid his provident fund benefit in the amount of R21 257.91 by the first respondent. He was also paid an amount of R85 432.28 in respect of his preservation fund benefit from the second respondent. The benefits were paid into the complainant's bank account through electronic funds transfer in 2009. It provided breakdowns of the amounts that were paid to the complainant, which reads as follows:

"Retirement Savings Account	R27 118.92
Less Tax	R 4 882.50
Plus Late Payment Interest	R 23.79
Net Payment	R21 257.91."

- 4.2 His preservation fund benefit was computed as follows:

"Retirement Savings Account	R108 803.83
Less Tax	R 23 393.31
Plus Late Payment Interest	R 21.76
Net Payment	R 85 432.28."

- 4.3 It states that the complainant is currently in receipt of a permanent health insurance benefit in terms of an income protection scheme underwritten by the third respondent. The insurer has confirmed that the complainant continues to receive a monthly income in terms of the self-standing disability policy.
- 4.4 The third respondent concludes that it is not in a position to comment on the complainant's dissatisfaction relating to his employment and medical aid issues. It requests that the complaint against the first and second respondents be dismissed.

## [5] **DETERMINATION AND REASONS THEREFOR**

### *Introduction*

- 5.1 The issues that fall for determination are, firstly, whether or not the withdrawal of the complainant's membership of the first and second respondent was lawful and secondly, whether or not his removal from the fourth respondent's medical aid scheme was lawful. The last issue relates to the complainant's allegations that the fourth respondent be ordered to refund all the contributions it was supposed to pay on his behalf until he reaches the age of 65 years.

### *The withdrawal of the complainant from the funds*

- 5.2 The complainant as a member of the first and second respondents is bound by the rules of the funds (see section 13 of the Act). The trustees of the funds are also bound to pay the complainant's benefits in terms of the funds' rules (see *Tek Corporation Provident Fund and Others v Lorentz* [2000] 3 BPLR 227 (SCA)).
- 5.3 The facts indicate that the complainant's employment was terminated as he could not work due to ill-health. This was confirmed by the complainant in his initial complaint. The complainant is receiving a monthly disability income in terms of an income protection scheme underwritten by the third respondent. In terms of rule 10.3 of the first respondent's rules, the complainant became entitled to receive his retirement savings account plus a disablement insurance benefit after he became medically disabled to discharge his duty. Rule 10.3 of the first respondent's rules reads as follows:

"Subject to the provisions of RULES 10.6.2 and 11, if a MEMBER suffers TOTAL AND PERMANENT DISABLEMENT whilst in EMPLOYMENT before the last day of the month in which he attains the INSURANCE BENEFIT CEASE AGE or his sixty-fifth birthday, whichever is the earlier, he will become entitled to his RETIREMENT SAVINGS ACCOUNT, plus the disablement INSURANCE BENEFIT after the expiry of the WAITING PERIOD, provided that the disability endures until the expiry of the WAITING PERIOD. The WAITING PERIOD will commence on the last day during which the MEMBER was at work attending to his normal duties."

- 5.4 Rule 10.1.2 of the second respondent's rules also states as follows:

"A MEMBER who becomes permanently incapable of carrying his occupation due to sickness, accident, injury or incapacity through infirmity of body or mind may, on the production of medical evidence acceptable to the TRUSTEES, retire from the FUND on the last day of any month occurring before his RETIREMENT DATE, in which event he will become entitled to his RETIREMENT SAVINGS ACCOUNT."

- 5.5 Thus, the complainant became entitled to receive his retirement savings account from the first and second respondents after he became medically disabled to discharge his duty. In terms of rules 10.3 and 10.1.2 above, the funds were bound to pay the complainant's retirement savings accounts. The complainant also became entitled to receive a disablement benefit in terms of rule 10.3 of the first respondent's rules.
- 5.6 The facts indicate that the complainant was paid amounts of R85 432.28 and R21 257.91 by the first and second respondents, which consisted of his retirement savings accounts in the funds. The third respondent provided breakdowns of the benefits that were paid to the complainant. There is an uncontested submission that the complainant is also receiving a monthly income disability benefit in terms of a policy underwritten by the third respondent. Therefore, the withdrawal of the complainant from the funds and the payment of his retirement savings accounts were in terms of

the rules of the first and second respondent.

*The removal of the complainant from the employer's medical aid scheme and the termination of his employment*

- 5.7 The complainant is also dissatisfied with the fact that the fourth respondent removed him from its medical aid scheme. However, it appears from the submissions that the medical aid scheme is a separate benefit which is not payable in terms of the first and second respondents' rules. The medical aid scheme is payable in terms of a separate policy operated by the fourth respondent for the benefit of its employees. A claim arising from the medical aid scheme is not payable in terms of the first and second respondents' rules.
- 5.8 In terms of the definition of a "complaint" in section 1 of the Act, a complaint must relate to the administration of a fund, the investment of its funds or the interpretation and application of its rules. A complaint which relates to a separate medical aid scheme, such as the one in this matter, is not a complaint as defined as it does not relate to a pension fund organisation. Thus, this Tribunal does not have jurisdiction to adjudicate this aspect of the complaint.
- 5.9 The complainant's claim relating to the termination of his employment without a hearing also falls outside the jurisdiction of this Tribunal. This is due to the fact that this is essentially a labour issue between the complainant and the fourth respondent (see *Armaments Development and Production Corporation of SA Ltd v Murphy NO and Others* [1991] 11 BPLR 227 (C) at 232A-H).
- 5.10 The complainant also made bare allegations without any proof that the fourth respondent should refund all medical aid and provident fund

contributions that it was supposed to pay on his behalf. As indicated above, this Tribunal cannot adjudicate any claim relating to the complainant's medical aid scheme. As regards his provident fund benefit, the third respondent has provided a breakdown of his benefits, which consisted of his retirement savings accounts in terms of the fund rules.

5.11 In the light of the submissions, this Tribunal is satisfied that the first and second respondents have discharged their liability to the complainant in terms of their rules. The complainant also failed to show that the fourth respondent acted contrary to the funds' rules in applying for payment of his retirement savings accounts in the funds.

**[6] ORDER**

1. In the result, the complaint cannot be upheld and is dismissed.

**DATED AT JOHANNESBURG ON THIS 1<sup>ST</sup> DAY OF AUGUST 2012**

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**MA LUKHAIMANE**  
**DEPUTY PENSION FUNDS ADJUDICATOR**

**Section 30M filing: Magistrate's Court**

*No legal representation*